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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,934	09/09/2003	Barry Wixey	TN-2347B	1594
7590	08/18/2006		EXAMINER	
Adan Ayala, Esq. Black & Decker Inc. 701 E. Joppa Road, TW-199 Towson, MD 21286			SELF, SHELLEY M	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/657,934	WIXEY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shelley Self	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 29 June 2006.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 19 and 20 is/are allowed.  
 6) Claim(s) 1-18 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 29 June 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____
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## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on June 29, 2006 is sufficient to overcome the prior art reference and an action on the merits follows.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claims 1, 10, 15 and 16, the claims fail to positively recite any connection between the base and the rest of the positively recited elements. For example, the claims state, “*a base assembly; a carriage assembly disposed above the base assembly...*” are the base assembly and carriage assembly operably connected? Clarification is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welsh et al. (5,771,949) in view of Liao (5,829,499). With regard to claims 1, 10 and 15, Welsh

discloses a power planer for planing a top surface of a workpiece comprising: a base assembly (20); a carriage assembly (26) disposed above the base assembly, the carriage assembly comprising a cutter head assembly (52), the carriage assembly being vertically movable to change distance between the base assembly and the carriage assembly; a hand crank (96) attached to the carriage assembly for changing the distance between the base assembly (col. 6, lines 36-43) and the carriage assembly; a material removal gauge (370) disposed on the carriage assembly; a switch (72) disposed on the carriage assembly; and a height scale (106) disposed on the base assembly; wherein the material removal gauge, the switch and the height scale are on the front side of the power planer, and the hand crank is substantially on the front half of the power planer. (Examiner notes that because the height scale is on side 16, which is on the base 20, the scale is also on the base via the side). Welsh does not disclose the hand crank being vertically movable with the carriage assembly. Liao teaches in a closely related art, a power planer (fig. 1) for planing a top surface of a workpiece including a base (20), carriage assembly (30) including a cutter head, a hand crank (50; fig. 4) attached to the carriage assembly and vertically movable with the carriage assembly (col. 3, lines 11-35; fig. 4). Liao teaches the hand crank vertically movable with the carriage assembly for ease of adjusting the height or vertical distance of the carriage assembly relative to the base. Because the references are from a closely related art and deal with a similar problem (i.e. material removal from a workpiece via a vertically adjustable cutterhead) it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Welsh's hand crank to be vertically movable with the carriage assembly so as to efficiently adjust the vertical position of the carriage assembly and cutterhead relative to the base assembly as taught by Liao.

Furthermore, it would have been equally obvious at the time of the invention to one having ordinary skill in the art to construct Liao having a material removal gauge, height scale and switch on the front side of the planar so as to manually control power to the cutterhead as taught by Welsh.

With regard to claim 2, Welsh discloses the switch and hand crank on the same side half. Examiner notes the switch and hand crank on the same half of the planer half is defined as that split along the longitudinal length of the planer.

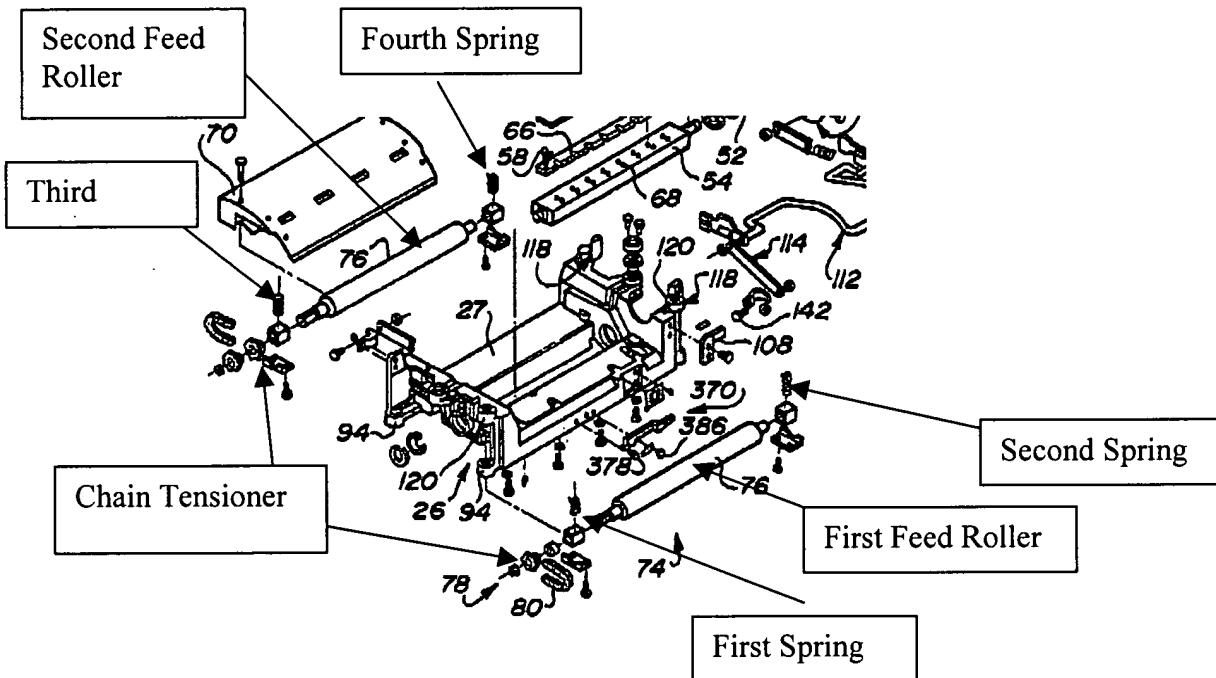
With regard to claim 3, Welsh discloses handles (96, 30, 112). Examiner notes no structure has been positively defined relative to the handles, the recitation “speed selector” does not positively define structure of the handle.

With regard to claim 4, Welsh discloses a carriage height mechanism (106, 108) disposed on the carriage assembly and disposed on the front half of the power planer (fig. 1).

Further regarding claim 10, as noted above (clm. 1), Welsh discloses a base, carriage assembly, hand crank, material removal gauge, switch and height scale. Welsh further discloses the carriage assembly comprising a motor (col. 6, lines 9), a cutterhead assembly (26, 52) driven by the motor, the cutterhead assembly being coupled to a transmission (78), a first roller (76) assembly drivingly connected to the transmission, a second roller assembly (76) drivingly connected to the first roller assembly, the carriage assembly being vertically movable to change distance between the base and the carriage assembly (col. 6, lines 6-17).

With regard to claims 11 and 13, Welsh discloses the first and second rollers (76) drivingly connected to the transmission via a chain (80; fig. 2; col. 6, lines 11-12).

With regard to claims 12 and 14, Welsh discloses a chain tensioner mechanism (fig. 2) for maintaining constant tension on the chain (fig. 2).



Further regarding claim 15, as noted above with reference to claim 1, Welsh further discloses first, second, third and fourth springs (fig. 2). Welsh is silent to the spring forces, however it is inherent that Welsh's first and third springs provide unequal force because as a workpiece is initially gripped and feed into the planer apparatus via the first feed roller the first and second springs provide equal forces to maintain the workpiece level and straight. As material is removed from the workpiece and the workpiece is continually feed through the planer the second roller grips the workpiece and pulls the workpiece through the planer device. Because less material is ejected out of the planer than initially put it, i.e. material has been removed via the carriage assembly and cutterhead, less force is necessary to grip and pull the work piece. Accordingly the springs that provide the force to the feed rollers (76) have differing spring forces. As to the optimal selection of the spring forces, Welsh is silent, however

Applicant's disclosure fails to provide any criticality to unequal spring forces and only nominally recites such. The mere recitation of differing values for the spring forces does not in itself warrant patentability and would be determined via routine engineering experimentation and practices.

Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welsh et al. (5,771,949) in view of Liao (5,829,499) and Buttke (2,792,036). With regard to claims 5 and 9, as noted above with reference to claim 1, Welsh discloses a power planer comprising a base, carriage, cutterhead assembly, hand crank, material removal gauge, switch and height scale. Welsh also discloses the cutterhead having a main body. Welsh is silent to three knives disposed on the main body.

Further as noted above, Liao teaches a power planing having a base, carriage, cutterhead, hand crank vertically movable with the carriage. For the reasons noted above with reference to claim 1, it would have been obvious at the time of the invention to one having ordinary skill in the art to replace, Welsh's hand crank with a hand crank vertically movable with the carriage as taught by Liao.

Buttke teaches in a similar art a planer having a cutterhead with a main body wherein three knives are disposed on the main body (fig. 27). Buttke teaches this construction for consistent surfacing of the workpiece surface. Because the references are from a closely related art it would have been obvious at the time of the invention to one having ordinary skill in the art to replace Welsh's single blade cutterhead with a cutterhead having three knives for improved surfacing or removal of material from a workpiece as taught by Buttke.

As to the knives being locked in a horizontal position (clm. 9), Welsh discloses a locking mechanism for locking the cutterhead and carriage at any desired position, therefore the ability to so lock the knife/blade at a horizontal position.

With regard to claims 6 and 7, Welsh discloses at least six screws (60).

With regard to claim 8, both Welsh and Liao disclose a cutterhead lock mechanism (Welsh 172, 210, 240, 292, 310; Liao figs. 6, 7).

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welsh et al. (5,771,949) in view of Liao (5,829,499) and Chen (5,988,239). As noted above with reference to claim 1, Welsh discloses a base, carriage assembly, cutter head, first and second rollers (76) drivingly connected (col. 6, lines 6-17) via chain transmission, a hand crank, a material removal gauge, and a height scale. Welsh does not disclose the hand crank movable vertically with the carriage assembly. For the reasons noted above with regard to claim 1, it would have been obvious at the time of the invention to one having ordinary skill in the art to replace, Welsh's hand crank with a hand crank that is movable vertically with the carriage assembly so as to efficiently adjust the vertical distance or depth of the carriage and cutterhead as taught by Liao.

Welsh is silent to the first and second roller assembly lower than the cutter head or the first roller assembly lower than the second. It would have been obvious at the time of the invention to arrange Welsh such that the first and second roller assemblies were lower than the cutterhead or that the first roller assembly is lower than the second roller assembly, because mere rearrangement of parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Moreover, Chen teaches in a similar art a planer having a cutterhead, first and second roller assemblies rotatably drivingly connected to the cutterhead via a chain and transmission so as to synchronize rotation of the rollers. Chen further teaches that the roller assemblies are lower than the cutterhead (60) for efficient feeding of the workpiece, the first roller assembly being forced lower than the second to initially grip and feed the workpiece into the planer device. Chen teaches the rollers (80, 90) being biased downward/lower via coil springs. Examiner further notes that because the roller centers are lower than that of the cutter head the rollers are lower than the cutterhead. Because the references are from a similar art and deal with similar problem (i.e. feeding a workpiece into a planer apparatus via spring biased roller assemblies) it would have been obvious the time of the invention to one having ordinary skill in the art to construct Welsh such that the roller assemblies were lower than the cutterhead so as to efficiently feed a workpiece into the planer as taught by Chen.

#### *Allowable Subject Matter*

Claims 19 and 20 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: for the reasons noted in the Final Office Action (8/25/05) claims 19 and 20 are deemed allowable over the prior art of record.

#### *Response to Arguments*

Applicant's arguments, filed June 29, 2006, with respect to the rejection(s) of the claim(s) regarding the applicability of prior art, Chuang (6,510,879) have been fully considered and are

persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Liao as noted above.

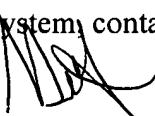
The new ground(s) of rejection was not necessitated by an amendment, according this Office Action is made non-final.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (571) 272-4524. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on accessing the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf  
August 15, 2006



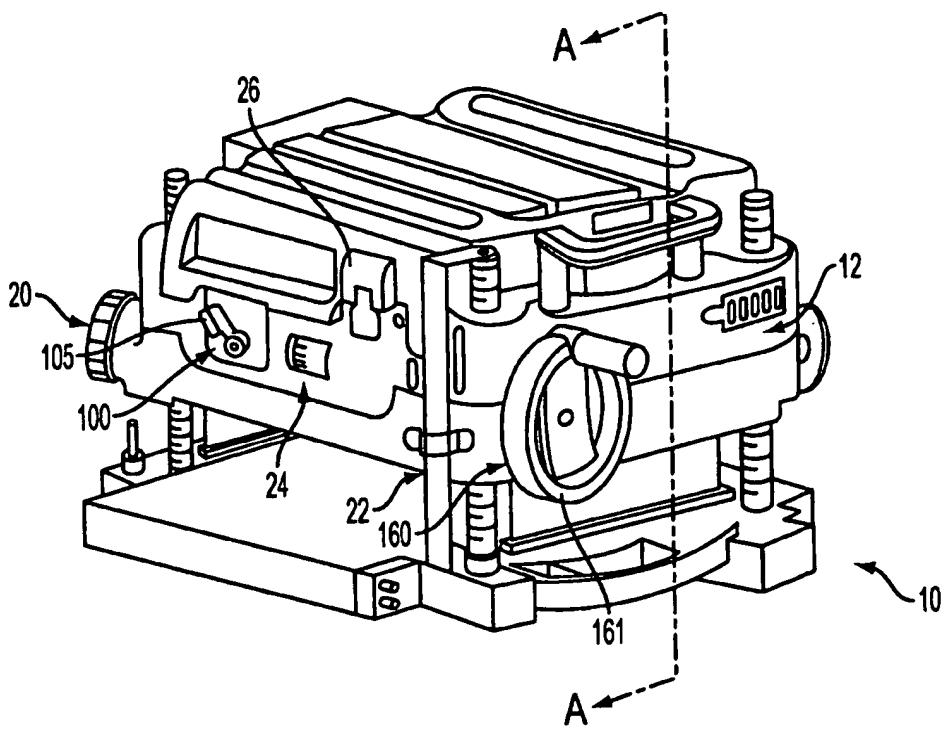


FIG. 1

Approved  
S. Set

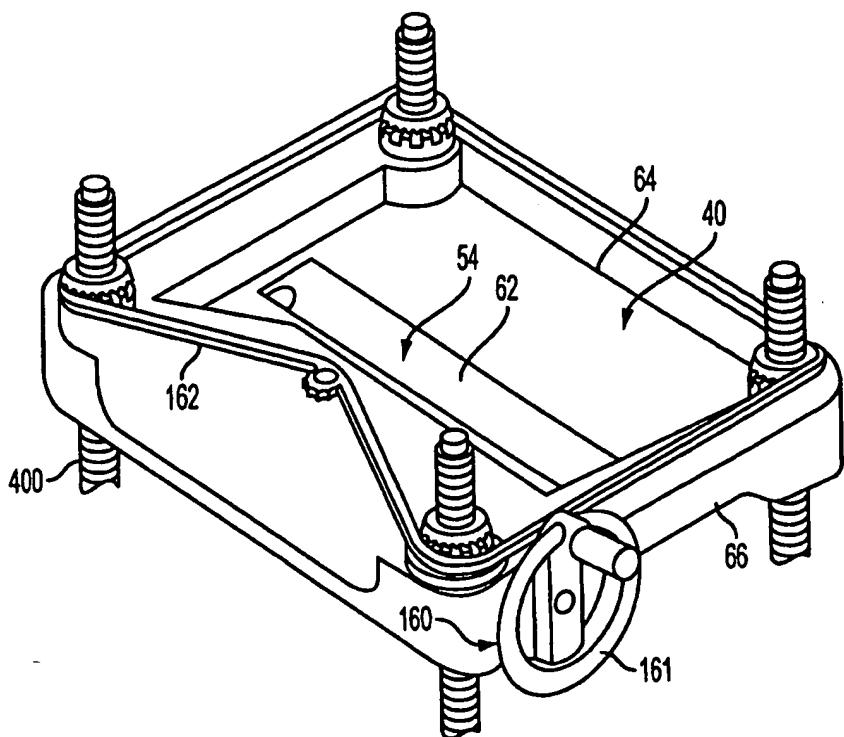


FIG. 2